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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 RON HILL,

11 Plaintiff,

12 v.

13 MICHAEL J. ASTRUE,  
14 Commissioner of Social Security,

15 Defendant.

)  
) Case No.: C08-966 CRD  
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)

) ORDER RE: SOCIAL SECURITY  
) DISABILITY APPEAL  
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17 Plaintiff Ron Hill appeals the final decision of the Commissioner of the Social Security  
18 Administration (“Commissioner”) who denied his application for Supplemental Security Income  
19 (“SSI”) disability benefits under Title XVI of the Social Security Act (“SSA” or the “Act”), 42  
20 U.S.C. sections 1381-83f, after a hearing before an administrative law judge (“ALJ”). For the  
21 reasons set forth below, the Court AFFIRMS the Commissioner’s decision.

22 I. FACTS AND PROCEDURAL HISTORY

23 Plaintiff is a forty-seven-year-old man, thirty-three years old at the alleged disability  
24 onset date. He does not have a high school education. Plaintiff applied for SSI in October 2002,  
25 alleging disability since January 1995 due to depression, anxiety, and gout. His claim was  
26 denied initially and upon reconsideration, and he timely requested an ALJ hearing.

27 A *de novo* hearing before ALJ Bauer was held on March 22, 2005 that resulted in a denial  
28 of benefits. Plaintiff requested review by the Appeals Council and review was denied. Plaintiff

1 then appealed to this Court and the parties stipulated to a remand to the ALJ for further  
2 proceedings.

3 On November 13, 2007, ALJ Bauer held a second hearing. The ALJ heard testimony  
4 from two witnesses: a vocational expert and Plaintiff, who was represented by counsel, George  
5 Fields, Esq. Administrative Record (“AR”) at 242-78. The ALJ rendered an unfavorable  
6 decision on March 25, 2008, again finding Plaintiff not disabled. Plaintiff requested review by  
7 the Appeals Council and review was denied, rendering the ALJ’s decision the final decision of  
8 the Commissioner. 20 C.F.R. §§ 404.981, 422.210 (2006). On June 20, 2008, Plaintiff initiated  
9 this civil action for judicial review of the Commissioner’s final decision.

## 10 II. JURISDICTION

11 Jurisdiction to review the Commissioner’s decision exists pursuant to 42 U.S.C. sections  
12 405(g) and 1383(c)(3).

## 13 III. STANDARD OF REVIEW

14 Pursuant to 42 U.S.C. section 405(g), this Court may set aside the Commissioner’s denial  
15 of social security benefits when the ALJ’s findings are based on legal error or not supported by  
16 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir.  
17 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is such  
18 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
19 *Richardson v. Perales*, 402 U.S. 389, 402 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
20 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
21 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
22 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
23 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas*  
24 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than  
25 one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

## 26 IV. THE DISABILITY EVALUATION

27 As the claimant, Mr. Hill bears the burden of proving that he is disabled within the  
28 meaning of the Social Security Act. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999)

(internal citations omitted). The Act defines disability as the “inability to engage in any substantial gainful activity” due to a physical or mental impairment which has lasted, or is expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if his impairments are of such severity that he is unable to do his previous work, and cannot, considering his age, education, and work experience, engage in any other substantial gainful activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§ 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at any step in the sequence, the inquiry ends without the need to consider subsequent steps.

Step one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R. §§ 404.1520(b), 416.920(b).<sup>1</sup> In the present case, the ALJ found that Plaintiff had not engaged in substantial gainful activity since October 2002. AR 285, Finding 1. At step two, the claimant must establish that he has one or more medically severe impairments, or combination of impairments, that limit his physical or mental ability to do basic work activities. If the claimant does not have such impairments, he is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). In this case the ALJ found Plaintiff has the severe impairment of gout. AR 286, Finding 2. If the claimant does have a severe impairment, the Commissioner moves to step three to determine whether the impairment meets or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d), 416.920(d). A claimant whose impairment meets or equals one of the listings for the required twelve-month duration requirement is disabled. *Id.* In this case the ALJ found that Plaintiff’s impairment did not meet or equal the requirements of any listed impairment. AR 291, Finding 3.

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<sup>1</sup>Substantial gainful activity is work activity that is both substantial, *i.e.*, involves significant physical and/or mental activities, and gainful, *i.e.*, performed for profit. 20 C.F.R. § 404.1572.

1 When the claimant's impairment neither meets nor equals one of the impairments listed  
2 in the regulations, the Commissioner must proceed to step four and evaluate the claimant's  
3 residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the  
4 Commissioner evaluates the physical and mental demands of the claimant's past relevant work to  
5 determine whether he can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). The  
6 ALJ in this case determined Plaintiff retained the RFC to perform "medium work." AR 291,  
7 Finding 4. The ALJ next found that Plaintiff did not have any past relevant work. *Id.* at 296,  
8 Finding 5.

9 If the claimant is able to perform his past relevant work, he is not disabled; if the opposite  
10 is true, the burden shifts to the Commissioner at step five to show the claimant can perform other  
11 work that exists in significant numbers in the national economy, taking into consideration the  
12 claimant's RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g);  
13 *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable to perform  
14 other work, the claimant is found disabled and benefits may be awarded. In this case, the ALJ  
15 found that Plaintiff could perform medium unskilled work limited to simple repetitive tasks with  
16 occasional public contacts, and, based on vocational expert testimony, determined that Plaintiff  
17 retained the capacity to work at jobs such as laundry worker and kitchen helper. AR 298. The  
18 ALJ therefore concluded Plaintiff was not disabled as defined in the SSA. *Id.*

## 19 V. ISSUES ON APPEAL

20 Plaintiff presents the following principal issues on appeal:

- 21 1. Did the ALJ err in evaluating Plaintiff's severe impairments?
- 22 2. Did the ALJ err in assessing Plaintiff's credibility?
- 23 3. Did the ALJ err in questioning the vocational expert?

24 Dkt. No. 9 at 23-24.

## 25 VI. DISCUSSION

26 This case was brought before this Court in July 2006 and the parties stipulated to a  
27 remand for further proceedings. The Appeals Council issued a remand order directing the ALJ  
28 to correct the decision in five main areas: 1) further consider the opinions of Drs. Parker, Suh,

1 Glisky, West, Fisher, and Peterson; 2) further evaluate the mental impairments using the proper  
2 SSA evaluation technique in all functional areas; 3) provide germane reasons for discounting  
3 third party testimony of Plaintiff's ex-wife and ex-girlfriend; 4) further consider Plaintiff's RFC;  
4 and 5) obtain supplemental evidence from a vocational expert. AR 305. Plaintiff appeals on all  
5 issues except the third party testimonies. In the ALJ decision now under review, the ALJ  
6 incorporated by reference the portions of the first decision that were not in error. AR 284-85. In  
7 this decision, the ALJ concluded that the new evidence and a reconsideration of the issues as  
8 directed by the Appeals Council did not change the decision and did not warrant an award of  
9 benefits. This Court affirms the ALJ's decision based on resolution of the following issues  
10 brought by Plaintiff.

11 A. *The ALJ did not err in assessing Plaintiff's severe impairments.*

12 Plaintiff asserts the ALJ erred in failing to properly assess the opinions of examining  
13 physicians Robert Parker, Ph.D., P.C., San Suh, M.D., Martha Glisky, Ph.D., and Raymond  
14 West, M.D., and the two state agency evaluators, Alex Fisher, Ph.D., and Gerald Peterson, M.D.  
15 Plaintiff also disputes the ALJ's findings with respect to the newer evaluations by Drs. Goldberg,  
16 Virji and Ankuta. Plaintiff argues the ALJ improperly weighed each of their opinions in  
17 concluding that he does not have a severe mental impairment. Dkt. 9 at 10. To reject an  
18 uncontradicted opinion of a treating or examining doctor, an ALJ must state clear and convincing  
19 reasons that are supported by substantial evidence. *Lester v. Chater*, 81 F.3d 821, 830 31 (9th  
20 Cir.1995); *Magallanes v. Bowen*, 881 F.2d 747, 751-55 (9th Cir. 1989). If a treating or  
21 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject  
22 it by providing specific and legitimate reasons that are supported by substantial evidence. *Id.*  
23 The ALJ can meet this burden by setting out a detailed and thorough summary of the facts and  
24 conflicting clinical evidence, stating his interpretation thereof, and making findings.  
25 *Magallanes*, 881 F.2d at 751 (internal citations omitted). The rejection of an opinion of a  
26 treating physician based in part on the testimony of a nontreating, nonexamining medical advisor  
27 may be upheld. *Morgan v. Commissioner*, 169 F.3d 595, 602 (9th Cir. 1999), citing *Magallanes*,  
28 881 F.2d at 751-55; *Andrews*, 53 F.3d at 1043; *Roberts v. Shalala*, 66 F.3d 179 (9th Cir. 1995).

1           Dr. Parker

2           In 2002, Dr. Parker evaluated Plaintiff and diagnosed him with depression and anxiety in  
3 moderate and marked levels, with limitations in performing tasks, exercising judgment, making  
4 decisions, interacting in public, maintaining appropriate behavior, and appropriately relating to  
5 coworkers, and supervisors. AR 148-49. The ALJ gave “no weight” to Dr. Parker’s opinion.  
6 AR 288. Plaintiff argues that it was error to do so because the ALJ’s reasons for dismissing the  
7 opinion are incorrect.<sup>2</sup> The ALJ gave “no weight” to Dr. Parker’s 2002 psychological  
8 evaluation, citing the following reasons: the opined limitations are unsupported by objective  
9 medical evidence and in conflict with Plaintiff’s actual level of mental functioning; the  
10 limitations were expected to last for only 6 months; Dr. Parker examined Plaintiff on only one  
11 occasion which was not for treatment but for obtaining benefits; and psychological testing  
12 suggests exaggerated symptoms and limitations and are therefore unreliable. AR 288-89.

13           Although a review of Dr. Parker’s assessment indicates the ALJ’s comments are factually  
14 accurate, the Court questions the legitimacy of several of the ALJ’s stated reasons. Absent  
15 contradictory evidence, the finding that the opinion is unsupported by objective medical  
16 evidence is not convincing; Dr. Parker is an examining physician, presumably presenting just  
17 such objective medical evidence in the form of the evaluation he conducted. That Dr. Parker  
18 examined Plaintiff for benefits evaluation rather than treatment is likewise not convincing; such  
19 is the very nature of the SSA’s and the state agency’s disability benefits determination process.

20           The ALJ’s finding that Plaintiff’s “actual level of functioning” is in conflict with Dr.  
21 Parker’s opinion is circular reasoning absent evidence that he functions at a higher mental level  
22 than Dr. Parker opined. The ALJ cites such evidence, noting Plaintiff’s daily functioning as  
23 being social, having friends and at one time a girlfriend, which the ALJ found inconsistent with  
24 Plaintiff’s claim of social isolation due to depression and anxiety. AR 294. That the opined  
25 limitations were expected to last only 6 months and that Dr. Parker concluded his psychological

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26  
27 <sup>2</sup> The Court notes that the Appeals Council found that the ALJ’s first decision discussed Dr.  
28 Parker’s evaluation but did not sufficiently address the limitations assessed and did not  
accommodate them in the RFC finding. In the second decision, the ALJ again does not address  
specific limitations, but instead gives reasons for their dismissal.

1 test results may reflect symptom and limitation exaggeration, are also reasons supported by the  
2 record and do not support a severe impairment finding. The Court finds these latter reasons clear  
3 and convincing and supported by substantial evidence in the administrative record. *Magallanes*,  
4 881 F.2d at 751-55. Accordingly, the ALJ's decision to give Dr. Parker's 2002 evaluation no  
5 weight is not in error.

6 Dr. Suh

7 In 2003, examining physician Dr. Suh evaluated Plaintiff, noting depression and anxiety,  
8 which he opined would be improved with "mood stabilizer treatment" but also noted that  
9 Plaintiff feared being on antidepressant medication, and that due to "recent stressors in his life  
10 and his mother having passed away three years ago, his ability to maintain consistent gainful  
11 employment at this time is markedly limited." AR 159. The ALJ gave "little to no weight" to  
12 Dr. Suh's evaluation because "she did not indicate how much of his limitations were related to  
13 his history of polysubstance abuse" and because "she did not acknowledge that his inability to  
14 maintain employment during the past three years could have been due to the fact that he was in  
15 prison for drug use and activity." AR 289. The ALJ also found significant that in the  
16 examination with Dr. Suh, Plaintiff,

17 ...[D]escribed adequate activities of daily living and social functioning and his  
18 mental status examination was within normal limits, certainly not reflecting  
19 marked or serious, or even moderate, symptoms or difficulties in his functioning.  
20 Dr. Suh obviously relied quite heavily on the subjective report of symptoms and  
21 limitations provided by claimant, and seemed to uncritically accept as true most,  
22 if not all, of what he reported. Yet, as explained elsewhere in this decision, there  
exist good reasons for questioning the reliability of claimant's subjective  
complaints. The internal inconsistencies undermine the reliability of this  
evaluation."

23 *Id.* Plaintiff argues that Dr. Suh was aware of his drug and incarceration history (AR 157) and  
24 that the state agency evaluators, Drs. Fisher and Peterson, adopted many of her findings (AR  
25 166, 182). Regardless, the Court finds that the ALJ's reasoning that Dr. Suh did not address the  
26 impact of prior substance abuse and prison on Plaintiff's inability to maintain employment for  
27 the period discussed, and the inconsistent report of his seemingly normal activities of daily living  
28 clear and convincing and supported by substantial evidence in the administrative record. The

1 ALJ was directed by the Appeals Council to give specific reasons for rejecting Dr. Suh's  
2 conclusion regarding employment (AR 303) and the ALJ did so. Accordingly, the ALJ's  
3 decision to give Dr. Suh's evaluation reduced weight is not in error.

4 Dr. Glisky

5 In 2005, examining physician Dr. Glisky performed a psychological evaluation on  
6 Plaintiff. The ALJ gave "little to no weight" to Dr. Glisky's evaluation, citing the following  
7 reasons: (1) Dr. Glisky admitted the evaluation was based primarily on Plaintiff's self-reported  
8 history and on reviewing records by Drs. Suh and Parker, which were also discounted; (2) the  
9 assigned GAF score of 50 is inconsistent with Plaintiff's admitted activities of daily living; (3)  
10 Plaintiff was socially appropriate during the evaluation, demonstrated adequate verbal expression  
11 and comprehension, and could adequately sustain attention; and (4) the Test of Memory and  
12 Malingering indicated that:

13 "[S]cores suggest that Mr. Hill was not putting forth a true and effortful  
14 performance, and suggests that he was intentionally performing below his  
15 capabilities." She added that his scores on IQ testing also "cannot be interpreted  
16 or considered valid due to his intentionally poor performance on the malingering  
17 measure." She concluded that the claimant's performance on the entire evaluation  
18 cannot be interpreted as valid. Thus, given the evidence of intentional  
19 exaggeration and malingering, this evaluation clearly cannot be used as evidence  
20 of a "severe" mental impairment.

21 AR 289 (citations to administrative record omitted). Plaintiff argues parts of Dr. Glisky's  
22 evaluation are valid despite the doctor's opinion that he is malingering; however, the ALJ's  
23 reasoning is factually supported by Dr. Glisky's report. *See* AR 224-33. The ALJ's reasoning is  
24 clear and convincing and supported by substantial evidence in the administrative record, in  
25 compliance with the Appeals Council's order. Accordingly, the ALJ's decision to give Dr.  
26 Glisky's evaluation reduced weight is not in error.

27 Dr. West

28 In 2003, Dr. West examined Plaintiff and opined he could perform a light level of work  
and noted he had some depression. AR 164. The ALJ gave Dr. West's opinion regarding  
depression "no weight" because Dr. West examined Plaintiff for physical complaints, not mental,  
which the ALJ found is outside his area of medical expertise; because the records Dr. West



1 reviewed did not mention psychological problems, and because there is nothing in Dr. West's  
2 report to suggest psychological difficulties during the Dr. West's examination. AR 290. The  
3 ALJ concluded that Dr. West's comment, "[t]here does appear to be some depression. It is not  
4 unlikely that a major portion of his problem relates to depression and indeed, he admits that this  
5 is the case" (AR 164) is based on Plaintiff's subjective reporting and is speculative in nature.  
6 AR 290. The ALJ therefore concluded Dr. West's comment regarding depression should receive  
7 no weight based on the lack of objective medical findings and Plaintiff's already discredited  
8 subjective reporting of symptoms. *Id.* The Court disagrees with the ALJ's reasoning that Dr.  
9 West is not qualified to assess psychological impairments because it is outside his area of  
10 expertise. However, based on a review of Dr. West's report, the Court finds the ALJ's reasoning  
11 regarding the lack of objective medical evidence from Dr. West and Plaintiff's unsupported  
12 subjective complaints, supported by substantial evidence; therefore, the ALJ's decision to give  
13 Dr. West's comment regarding depression no weight is not in error.

14 Dr. Fisher and Dr. Peterson

15 The Appeals Council found the ALJ did not adequately evaluate the opinions of the two  
16 state agency psychological consultants, Drs. Peterson and Fisher, because their "moderate"  
17 restriction rating in the area of maintaining concentration, persistence or pace was not addressed.  
18 AR 304. Plaintiff argues that on remand the ALJ found the state agency physicians erred by  
19 relying on the opinions of Drs. Suh and Parker but the ALJ failed to provide sufficient reasons  
20 for discounting the opinions of Drs. Suh and Parker. Dkt. 9 at 16. The ALJ's decision notes that  
21 the doctors found the moderate restriction but gives their opinion "little to no weight" because  
22 they are not treating or examining physicians and because the opinion is based on the opinions of  
23 Drs. Suh and Parker, which the ALJ discounted as discussed above. AR 289-90. It is well-  
24 settled law that an ALJ must evaluate the opinion of a nonexamining state-agency doctor. *See*  
25 *Lester v. Chater*, 81 F.3d 821, 831 (9th Cir. 1995) (discussing the weight owed a nonexaminer's  
26 opinion). Opinions from nonexamining medical sources are to be given less weight than treating  
27 or examining doctors; however, an ALJ must always evaluate the opinion of such a source and  
28 may not simply ignore it. *Id.* In other words, an ALJ must evaluate the opinion of a

1 nonexamining source and explain the weight given to it. SSR 96-6p 1996 WL 374180, at \*2  
2 (S.S.A.). Here, the Court finds the weight assigned to the state agency physicians' opinion is not  
3 in error because the ALJ permissibly gave less weight to the nonexamining physicians and gave  
4 reduced weight because the opinions were based on other doctors' opinions which were  
5 reasonably discredited as discussed above. The ALJ's reasoning is based on clear and  
6 convincing reasons supported by substantial evidence in the record; therefore, the ALJ did not  
7 err in this regard.

8 Dr. Goldberg

9 After the ALJ's first decision, nonexamining physician Dr. Goldberg assessed Plaintiff  
10 by reviewing his records. AR 570-88. Plaintiff argues that although the ALJ appears to have  
11 accepted Dr. Goldberg's general limitations by limiting him to "simple work" he failed to  
12 address the weight given to Dr. Goldberg's opinion that he suffers from organic mental disorder,  
13 affective disorder, anxiety disorder, personality disorder and substance addiction disorder (AR  
14 570), and whether these disorders meet or equal a listed impairment at step three. Dkt. 9 at 16-  
15 17. The ALJ discussed Dr. Goldberg's opinion in detail including the specific diagnoses. See  
16 AR 287. The ALJ noted that in February 2006 the evaluator opined that Plaintiff could maintain  
17 the pace of simple work with limited public contact, and affirmed the results of the assessment in  
18 May 2006. AR 287. Based thereon, the ALJ found Plaintiff's RFC to include simple work with  
19 limited public contact. AR 291. That the ALJ did not specifically discuss the evaluator's  
20 opinion regarding the specific disorder diagnoses is, at most, harmless error because the ALJ  
21 incorporated the corresponding opined limitations into the RFC. Plaintiff's assertion that the  
22 ALJ similarly erred in not discussing whether the diagnoses met or equaled listings at step three  
23 is also not reversible error. After a thorough discussion regarding Plaintiff's impairments, the  
24 ALJ concluded at step three that, [t]he new evidence submitted on remand does not alter this  
25 conclusion...claimant's mental impairments are non-severe and therefore, he has only mild  
26 restrictions of activities of daily living, mild difficulties in social functioning, and mild  
27 difficulties in maintaining concentration, persistence, and pace." AR 291. The ALJ's reasoning  
28

1 is supported by substantial evidence in the record; therefore, the ALJ did not err in assessing Dr.  
2 Goldberg's opinion.

3 Dr. Virji

4 Plaintiff argues the ALJ did not provide specific reasons for not properly crediting the  
5 nonexamining opinion of Dr. Virji, who found Plaintiff to be limited to work at the light  
6 exertional level with postural limitations (AR 186-87). Dkt. 9 at 17. The ALJ referenced his  
7 first decision which he incorporated into the second decision where it was not reversed by the  
8 Appeals Council, and noted that, "the record simply does not contain a valid treating or  
9 examining source opinion indicating that the claimant is disabled or has limitations greater than  
10 a light residual functional capacity." AR 296. The record reflects that Dr. Virji found Plaintiff  
11 capable of working at the light exertional level with some postural limitations. The ALJ found  
12 Plaintiff had the RFC for medium work, and although he did not address the specific reasons for  
13 finding a greater physical RFC than Dr. Virji found, the Court finds that based on Dr. Virji's  
14 assessment, it is harmless error because Dr. Virji also noted that Plaintiff used "no assistive  
15 device, remarkably well built and muscular, motor strength good, sensation intact." AR 186.  
16 Given this and other physical evaluations in the record, it is reasonable that the ALJ would find  
17 capable of medium physical work. *See e.g.* AR 590. The Court also notes the Appeals Council  
18 did not find error in the ALJ's physical assessment but with the mental RFC assessment. Thus,  
19 the Court finds the ALJ's physical RFC assessment is based on substantial evidence in the record  
20 and not in error.

21 Dr. Ankuta

22 Plaintiff argues that while the ALJ accepted Dr. Ankuta's consultative opinion that he  
23 could "tolerate the emotional stress of competitive work", the ALJ did not address the  
24 inconsistency that Dr. Ankuta also diagnosed major depression and assigned a GAF of 50. The  
25 ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and  
26 resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
27 Cir. 1995). The ALJ discussed Dr. Ankuta's opinion in detail (AR 286-87) noting that the doctor  
28 opined he demonstrated limited ability to think abstractly, that "his memory was not adequate for

1 recalling simple or complex instructions at work *if he was responding to the best of his ability*”,  
2 but that he could maintain the pace of simple manual work and tolerate the emotional stress of  
3 competitive work.” AR 287 citing AR 623, emphasis in ALJ’s decision. Thus, Dr. Ankuta’s  
4 opinion is not internally inconsistent, but explained in the narrative he provided. The Court finds  
5 the ALJ’s reliance on Dr. Ankuta’s opinion supported by substantial evidence in the  
6 administrative record and therefore not in error.

7 *B. The ALJ did not err in assessing Plaintiff’s credibility.*

8 Plaintiff argues that the ALJ’s adverse credibility finding is not supported by substantial  
9 evidence. Dkt. 9 at 18-19. Plaintiff’s argument in this regard is based on his argument that the  
10 physicians’ opinions should be weighed differently; that there is no indication of drug seeking  
11 behavior; there is no legitimate issue of secondary gain; his daily activities do not prove he is  
12 able to work; and that the ALJ did not properly account for his mental impairments. Dkt. 9 at  
13 18-19. Absent evidence of malingering, the ALJ can only reject Plaintiff’s testimony regarding  
14 the severity of his symptoms by giving “specific, clear and convincing reasons” for the rejection.  
15 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036; *see also Vertigan v. Halter*, 260 F.3d 1044, 1049  
16 (9th Cir. 2001); *Thomas*, 278 F.3d at 958-59. In finding a claimant’s testimony unreliable, an  
17 ALJ must render a credibility determination with sufficiently specific findings, supported by  
18 substantial evidence. “General findings are insufficient; rather, the ALJ must identify what  
19 testimony is not credible and what evidence undermines the claimant’s complaints.” *Lester*, 81  
20 F.3d 821, 834 (9th Cir. 1995). “We require the ALJ to build an accurate and logical bridge from  
21 the evidence to her conclusions so that we may afford the claimant meaningful review of the  
22 SSA’s ultimate findings.” *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003). “In weighing  
23 a claimant’s credibility, the ALJ may consider his reputation for truthfulness, inconsistencies  
24 either in his testimony or between his testimony and his conduct, his daily activities, his work  
25 record, and testimony from physicians and third parties concerning the nature, severity, and  
26 effect of the symptoms of which he complains.” *Light v. Social Sec. Admin.*, 119 F.3d 789, 792  
27 (9th Cir. 1997).

1 As discussed above, the ALJ did not err in weighing the physician's opinions and  
2 concluding Plaintiff does not have a severe mental impairment preventing him from working.  
3 The ALJ also noted a "concern of drug seeking behavior as the claimant often alleged that he lost  
4 his medications and made multiple early refill requests. He also became belligerent when  
5 questioned about his early medication refills and his counselor opined that his behavior and fear  
6 of giving a urine specimen 'raises concerns about [Plaintiff's] secondary gains or possible drug  
7 seeking/drug use.' Also, he cancelled or failed to show up for appointments on a number of  
8 occasions." AR 293. An examination of the record reflects the ALJ's assessment is factually  
9 accurate and based on substantial evidence in the record.

10 The ALJ discussed Plaintiff's suspected motivation for secondary gain at length, citing  
11 multiple instances of suspected malingering that supports the ALJ's conclusion that his "pattern  
12 of behavior highly suggests that his focus is on obtaining monetary benefits on which to live  
13 rather than on obtaining treatment, improving his symptoms and limitations, and returning to  
14 work", including Plaintiff's own reports to providers, a financial incentive related to  
15 indebtedness for child support, a poor work history, and that his state benefits were discontinued  
16 based on suspected malingering. AR 294. The Court finds the ALJ's reasoning in this regard is  
17 based on substantial evidence in the administrative record.

18 Plaintiff also disputes the ALJ's conclusion regarding his daily activities; however, the  
19 reasons cited by the ALJ in this regard are again supported by substantial evidence in the record.  
20 The ALJ noted that "he watches television, goes for walks, goes to the library, and looks at  
21 sports books and magazines and also spends time at coffee shops" and that he admitted that he  
22 was able to weight lift, go to the gym, and make friends and at one time had a girlfriend,  
23 although he alleges social isolation." AR 294. The ALJ therefore concluded that such activities  
24 demonstrate Plaintiff is "engaging in a normal level of daily activity, social interaction, and  
25 activities that require concentration." AR 295. The Court therefore finds no error. In sum, the  
26 Court finds the ALJ's overall credibility assessment is supported by clear and convincing  
27 reasons, based on substantial evidence, and is free of legal error. *See Green v. Heckler*, 803 F.2d  
28 528, 532 (9th Cir. 1986) (stating that ALJ's credibility determinations are entitled to great

1 deference); *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982) (stating that ALJ’s role is to  
2 judge credibility of claimant).

3 *C. The ALJ did not err in questioning the vocational expert.*

4 Plaintiff contends that the ALJ erred at step five because the hypothetical question  
5 presented to the vocational expert (“VE”) was incorrect because it did not include Plaintiff’s  
6 limitations as opined by physicians. Dkt. 9 at 20-21. Plaintiff bases this argument on assigning  
7 error to the RFC determination as discussed above. The ALJ found that Plaintiff could perform  
8 medium work, with a limitation to simple repetitive tasks<sup>3</sup> and occasional public contacts. AR  
9 291. Based on the vocational expert testimony in response to a hypothetical question involving a  
10 person with those limitations, the ALJ concluded Plaintiff is capable of working as a kitchen  
11 helper and a laundry worker. As addressed above, this Court finds the RFC determination is  
12 based on substantial evidence and not in error; thus, the hypothetical questions asked of the VE  
13 based on that RFC were also not in error. The ALJ appropriately used a vocational expert to find  
14 examples of medium work jobs Plaintiff could perform, based on the RFC and limitations he  
15 assigned. Where the ALJ’s findings are based upon substantial evidence in the record, the  
16 Commissioner’s decision to deny benefits will not be reversed. *Bayliss*, 427 F.3d at 1214.

17 Plaintiff argues in his Reply brief that the ALJ confused “simple, routine tasks” (AR 689)  
18 with “simple, repetitive tasks” (AR 291) but that the kitchen helper and laundry worker jobs  
19 require “repetitive temperaments” according to the VE (AR 695). The Court finds the  
20 descriptions were used interchangeably by the ALJ and VE and that no apparent confusion  
21 existed at the hearing with respect to the VE’s testimony. Plaintiff further argues that the VE’s  
22 testimony is not consistent with the Dictionary of Occupational Titles (“DOT”) because the  
23 kitchen helper and laundry worker jobs are not “repetitive in their temperaments” according to  
24 the DOT and that the ALJ was required by SSR 00-4p to clarify any departure the VE made from  
25 the DOT. Dkt. 9 at 21; Dkt. 12 at 11.

26 SSR 004-4p provides in relevant part, “[w]hen a VE or VS provides evidence about the  
27 requirements of a job or occupation, the adjudicator has an affirmative responsibility to ask about  
28

1 any possible conflict between that VE or VS evidence and information provided in the DOT. In  
2 these situations, the adjudicator will: ask the VE or VS if the evidence he or she has provided  
3 conflicts with information provided in the DOT; and if the VE's or VS's evidence appears to  
4 conflict with the DOT, the adjudicator will obtain a reasonable explanation for the apparent  
5 conflict." An ALJ may not rely on the testimony of a vocational expert without first inquiring  
6 whether the VE's testimony conflicts with the DOT, but that harmless error occurs where (1)  
7 there is no conflict; or (2) if the VE provides sufficient support for the conclusion so as to justify  
8 any potential conflicts. *Massachi v. Astrue*, 486 F.3d 1149, 1150-54 (9th Cir. 2007). Plaintiff  
9 here argues that a conflict exists because the VE testified the jobs required "repetitive  
10 temperaments", and Defendant argues the DOT describes both jobs as "repetitive." The Court  
11 finds that even assuming this difference exists, such distinction is not material and did not result  
12 in confusion or any harmful departure from the DOT as presented by the vocational expert.

#### 13 VII. CONCLUSION

14 For the reasons set forth above, the Commissioner's decision is **AFFIRMED** and the case  
15 **DISMISSED**.

16 DATED this 17th day of February, 2009

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19 Carolyn R. Dimmick  
20 United States District Judge  
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